

Appl. No. 10/027,202
Am dt. dated Mar. 3, 2004
Reply to Office Action of Dec. 3, 2003

REMARKS/ARGUMENTS

Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

In the Specification

The title of the application has been amended to reflect the cancellation of claims 8 – 17, pertaining to a method, in response to a restriction requirement. Additionally, the paragraph beginning at page 3, line 2 has been deleted and the Abstract has been amended in response to the restriction requirement.

The paragraph beginning at page 8, line 35 has been amended to correct the trademark usage within the paragraph.

In the Claims

Claims 1 – 7 and 18 - 29 are presented for the Examiner's consideration.

As previously submitted, Applicant elected claims 1 – 7 and 18 – 20 in response to the restriction requirement mailed August 26, 2003. The non-elected claims (claims 8 – 17) have been cancelled.

Claims 21 – 29 have been added to describe specific embodiments of the inventive absorbent substrate. Claims 21 – 23 find support in the specification in the paragraph beginning at page 8, line 12. Claims 24 – 29 find support in the specification and claims 2 – 7, as originally filed.

Regarding Examiner's objections to the disclosure

As requested by the Examiner, the title of the present application has been amended to reflect the election the Applicant has made in response to the restriction requirement mailed August 26, 2003. Correspondingly, the Summary of Invention and the Abstract have also been amended to also reflect this election.

Additionally, Applicant has corrected the form of trademark usage as requested by the Examiner.

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Regarding Examiner's rejections

1. Rejection of anticipation by O'Keeffe

By way of the Office Action mailed December 3, 2003, claims 1 – 6 and 18 – 20 were rejected under 35 U.S.C. § 102(e) as allegedly being anticipated and thus unpatentable over International Publication Number WO 01/08541 A1 to O'Keeffe. This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

The Applicant respectfully contends that the O'Keeffe reference is not a proper reference for use under 35 U.S.C. § 102(e). As stated in MPEP 706.02(f)(1)(I)(C)(1), for the publication of an international application to be a proper 102(e) reference, the international application must meet three conditions: (1) an international filing date on or after November 29, 2000; (2) designation of the United States; and (3)a publication under PCT Article 21(2) in English. While the Applicant concedes that the second two conditions are met, the international application filing date indicated on the O'Keeffe WIPO publication is not on or after November 29, 2000 (i.e., August 2, 2000).

According to the MPEP 706.02(f)(1)(I)(C)(3), an international application with an international filing date prior to November 29, 2000, falls under the provisions of 35 U.S.C. § 102 and 374 prior to the AIPA. The MPEP continues on to state (see MPEP 706.02(f)(1)(I)(C)(3)(b)), WIPO publications directly resulting from such international applications under PCT Article 21(2), never should be used as references under 35 U.S.C. § 102(e). Such references may be applied as of their publication dates under 35 U.S.C. § 102(a) or (b).

This analysis is graphically shown within Chart II of the MPEP at 706.02(f)(1)(II). The flowchart (Chart II) also indicates that an international application with an international filing date before November 29, 2000 has no § 102(e) date.

For these reasons above, the Applicant contends that the rejection under 35 U.S.C. § 102(e) is improper and should be removed.

2. Rejection for obviousness by O'Keeffe in view of Marsen et al.

By way of the Office Action mailed December 3, 2003, claim 7 was rejected under 35 U.S.C. §103(a) as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over O'Keeffe (WO 01/08541 A1) as applied to claims 1 – 6 and 18 – 20, and further in view of Marsen et al. (EP 0032793). This rejection is respectfully traversed to the extent that it may apply to the present claim.

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As discussed above, the Applicant contends that the use of O'Keeffe as applied to claims 1 – 6 and 18 - 20 is an improper rejection under 35 U.S.C. § 102(e). Therefore, it is improper to use O'Keeffe further in view of Marsen et al. to make a rejection of claim 7 under 35 U.S.C. §103(a). As such, the rejection of claim 7 should be withdrawn.

All outstanding matters raised in the Office Action having been addressed, it is respectfully submitted that all of the present claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: (770) 597-8646.

Respectfully submitted,

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CERTIFICATE OF FACSIMILE TRANSMISSION

I, Nathan Hendon, hereby certify that on March 3, 2004, this document is being sent by facsimile to the United States Patent and Trademark Office, central facsimile number for all patent application related correspondence, at 703-872-9306.

By:

Nathan Hendon